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DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 351

Docket No. 121231747-2747-01

RIN: 0625-AA94

Modification of Regulation Regarding the Extension of Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Commerce (the Department) proposes to modify its regulation concerning the extension of time limits for submissions in antidumping (AD) and countervailing duty (CVD) proceedings. The modification, if adopted, will clarify that parties may request an extension of time limits before any time limit established under this part expires. This modification will also clarify under which circumstances the Department will grant untimely-filed requests for the extension of time limits.

DATES: To be assured of consideration, comments must be received no later than [INSERT 60 DAYS AFTER THE PUBLICATION OF THIS NOTICE IN THE FEDERAL REGISTER].

ADDRESSES: All comments must be submitted through the Federal eRulemaking Portal at <http://www.regulations.gov>, Docket No. ITA-2012-0006, unless the commenter does not have access to the Internet. Commenters who do not have access to the Internet may submit the

original and two copies of each set of comments by mail or hand delivery/courier. All comments should be addressed to Paul Piquado, Assistant Secretary for Import Administration, Room 1870, Department of Commerce, 14th Street and Constitution Ave., NW, Washington, DC 20230. The comments should also be identified by Regulation Identifier Number (RIN) 0625-AA94.

The Department will consider all comments received before the close of the comment period. The Department will not accept comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. All comments responding to this notice will be a matter of public record and will be available for inspection at Import Administration's Central Records Unit (Room 7046 of the Herbert C. Hoover Building) and online at <http://www.regulations.gov> and on the Department's Web site at <http://www.trade.gov/ia/>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, e-mail address: webmaster-support@ita.doc.gov.
FOR FURTHER INFORMATION CONTACT: Joanna Theiss at (202) 482-5052.

SUPPLEMENTARY INFORMATION:

Background

The Department proposes to modify 19 CFR § 351.302, which provides for the extension of time limits for submissions in AD and CVD proceedings, and the return of untimely-filed or unsolicited material. Currently, 19 CFR § 351.302(b) provides that, unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established by this part (*i.e.*, Part 351, “Antidumping and Countervailing Duties”). Section 351.302(c) provides that, before

the applicable time limit specified under § 351.301 expires, a party may request an extension pursuant to paragraph (b). Such a request must be in writing, filed in accordance with the relevant regulatory provision, and state the reasons for the request. The extension must be approved in writing. If the Secretary does not extend the time limit, section 351.302(d) sets forth the procedures for the rejection of untimely-filed or unsolicited material.

The Department proposes modifying section 351.302(c) to provide additional certainty to parties participating in AD and CVD proceedings in two important areas. First, the proposed rule will clarify that parties may request an extension of any time limit established by this part, rather than limiting extension requests to submissions under section 351.301, because currently there is no provision in the Department's regulations permitting parties to request extensions of time limits for submissions other than for those established in section 351.301. Thus, this modification makes explicit that parties may request extensions for any time limit established under Part 351. This modification is also consistent with paragraph (b), which provides that the Secretary may, for good cause, extend any time limit established under this part.

Further, the Department proposes modifying section 351.302(c) to clarify and confirm the specific circumstances under which the Department will consider an untimely-filed extension request. The current regulation does not account for extension requests filed after the time limit; section 351.302(c) merely states that "before the applicable time limit expires ... a party may request an extension." The current regulation also does not address a situation in which a party files an extension request so close to the time limit that the Department does not have the opportunity to respond to the request before the time limit has expired. Untimely-filed extension requests often result in confusion among the parties, difficulties in the Department's organization

of its work, and undue expenditure of Departmental resources in addressing such requests. This can impede the Department's ability to conduct AD and CVD proceedings in a timely and orderly manner.

In the vast majority of situations, there should be no reason why a party cannot request an extension prior to the expiration of the applicable time limit, and with adequate opportunity for the Department to consider the request before the time limit expires. It is the Department's view that only in extraordinary circumstances would a party not be able to submit the extension request in a timely manner. Therefore, the Department proposes modifying 19 CFR § 351.302(c) to specify that an untimely-filed extension request will not be considered unless the party demonstrates that extraordinary circumstances exist. Only if the Department determines that the party has demonstrated that extraordinary circumstances exist will the Department then consider whether the party has demonstrated that good cause exists for allowing an extension to the time limit pursuant to section 351.302(b).

The Department considers that untimely-filed extension requests encompass those requests that come in after the applicable time limit expires, but the Department requests comment on whether the term "untimely" should also include extension requests that are made very close to the applicable time limit. For example, an untimely-filed extension request could be defined as one that is received less than 48 or 24 hours before the applicable time limit expires. The Department also requests comment on whether there should be a separate standard for extension requests for submissions which are due from multiple parties simultaneously, such as case and rebuttal briefs, pursuant to section 351.309. The Department requests comment on whether a separate standard would be useful, to avoid a circumstance in which, for instance, one

party requests a last-minute extension to the time limit to file its case brief, with the result that it may review other parties' timely-filed briefs and thus obtain an advantage over the other parties.

Classification

Executive Order 12866

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

Initial Regulatory Flexibility Analysis (IRFA)

Pursuant to section 603 of the Regulatory Flexibility Act, the Department has prepared the following IRFA to analyze the potential impact that this proposed rule, if adopted, would have on small entities.

Description of the Reasons Why Action is Being Considered

The policy reasons for issuing this proposed rule are discussed in the preamble of this document, and not repeated here.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule; Identification of all Relevant Federal Rules which may Duplicate, Overlap, or Conflict with the Proposed Rule

This proposed rule is intended to alter the Import Administration's regulations for AD and CVD proceedings; specifically, to modify the regulation concerning the extension of time limits. The proposed rule would clarify that parties may request the extension of any time limit established under this part, as opposed to the current rule, which only addresses requests for the extension of time limits specified under section 351.301. Further, the proposed rule would establish a standard by which the Department would consider untimely-filed extension requests

because the current regulation only addresses extension requests that are filed before the applicable time limit for the submission expires.

The legal basis for this rule is 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538. No other Federal rules duplicate, overlap, or conflict with this proposed rule.

Number and Description of Small Entities Regulated by the Proposed Action

The proposed rules will apply to any interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, requesting extension of time limits for the submissions in AD and CVD proceedings. This could include any party participating in an AD or CVD proceeding, including exporters and producers of merchandise subject to AD and CVD proceedings and their affiliates, importers of such merchandise, domestic producers of like products, and foreign governments. However, it will only apply to those parties that request an extension of time limits.

Exporters and producers of subject merchandise are rarely U.S. companies. Some exporters and producers of subject merchandise do have U.S. affiliates, some of which may be considered small entities under the appropriate Small Business Administration (SBA) small business size standard. The Department is not able to estimate the number of domestic affiliates of foreign producers or exporters that may be considered small entities, but anticipates, based on its experience in these proceedings, that the number will not be substantial.

Importers may be U.S. or foreign companies, and some of these entities may be considered small entities under the appropriate SBA small business size standard. The Department does not anticipate that the proposed rule will impact a substantial number of small

importers because importers of subject merchandise who are not also producers or exporters (or their affiliates) rarely submit material in the course of the Department's AD and CVD proceedings, and those that do tend to be larger entities.

Some domestic producers of like products may be considered small entities under the appropriate SBA small business size standard. Although it is unable to estimate the number of producers that may be considered small entities, the Department does not anticipate that the number affected by the proposed rule will be substantial. Typically, domestic producers that bring a petition or participate actively in an AD or CVD proceeding account for a large amount of the domestic production within an industry, so it is unlikely that many of these domestic producers will be small entities.

In sum, while recognizing that U.S. affiliates of foreign producers or exporters, importers, and domestic producers that submit material in AD and CVD proceedings will likely include some small entities, the Department, based on its experience with these proceedings and the participating parties, does not anticipate that the proposed rule would impact a substantial number of small entities.

Description of the Projected Reporting, Recordkeeping, and other Compliance Requirements of the Proposed Rule

The proposed rule will require a party submitting an untimely-filed extension request to demonstrate that extraordinary circumstances exist. This will not amount to a significant burden. Under normal circumstances, a party should be able to submit its extension request in a timely manner because an extension request is a straightforward and usually concise document, identifying only the material to be submitted, the current time limit, the requested extension of

that time limit, and the reason for the extension request. In other words, there is no reason to submit extension requests in an untimely manner except under extraordinary circumstances.

Thus, if a party files its extension request in an untimely manner, the extraordinary circumstances for submitting the extension request in an untimely manner will be readily available to the party making the untimely extension request.

Description of any Significant Alternatives to the Proposed Rule that Accomplish the Stated Objectives of Applicable Statutes and that Minimize any Significant Economic Impact of the Proposed Rule on Small Entities

As required by 5 U.S.C. § 603(c), the Department's analysis considered significant alternatives. The alternatives which the Department considered include: (1) the preferred alternative of modifying the rule to establish that parties can request an extension of any time limit established under this part, and that an untimely-filed extension request will not be considered unless the party demonstrates that extraordinary circumstances exist; (2) maintaining the current rule which does not address extension requests for time limits established in provisions other than 19 CFR § 351.301 or untimely-filed extension requests; (3) modifying the rule to establish that parties can request an extension of any time limit established under this part, and that untimely-filed extension request will not be considered unless the party demonstrates that good cause exists; and (4) modifying the rule to establish that parties can request an extension of any time limit established under this part, and that untimely-filed extension requests will not be considered.

The Department does not anticipate that the first, preferred alternative will have a significant economic impact on small entities. First, a clarification that parties may request an

extension of any time limit established under this part, as opposed to only time limits established by section 351.301, will avoid confusion as to under which provision a party may request an extension. Also, a standard under which untimely-filed extension requests will be considered is not provided under the current regulation, and so the inclusion of a standard will provide clarity to parties appearing before the Department. It does not change the type of material which may be submitted to the Department, nor does it limit a party's ability to request an extension to time limits.

Under alternative two, the Department determined that maintaining the current rule and not addressing extension requests for time limits other than those established under section 351.301, and not including a standard concerning untimely-filed extension requests, will not serve the objective of the proposed rule. If the Department maintained the current rule, then there would be no standard under which the Department would consider untimely-filed extension requests. This would not provide certainty to parties participating in AD and CVD proceedings, and would not address the administrative issues which the Department has encountered. Thus, although this alternative was considered, it was not proposed.

The Department also considered modifying the rule to clarify that a party may request an extension of any time limit established under this part and to establish that the Department will not consider an untimely-filed extension request unless the party demonstrates that good cause exists, described as alternative three. As discussed in the consideration of its preferred alternative, the clarification that an extension request may be of any time limit established by this part serves the objectives of the proposed rule because it makes clear that 19 CFR § 351.302(c) applies to extension requests for any time limit established by this part. The Department next

considered a “good cause” standard for untimely-filed extension requests. As with the Department’s preferred alternative, this alternative establishes a standard under which untimely-filed extension requests will be considered, which is missing from the current rule. The disadvantage to this alternative is that the “good cause” exists as the standard by which the Department considers timely-filed extension requests under the current rule. Therefore, a party would have no reason to submit its extension request in a timely manner, because the same standard would apply as if the extension request were filed in an untimely manner. This will not serve the objective of the proposed rule to avoid confusion, will perpetuate the current difficulties in the Department’s organization of its work, and will perpetuate the undue expenditure of Departmental resources in addressing extension requests. Thus, it has not been proposed.

The Department also considered modifying the rule to clarify that a party may request an extension of any time limit established under this part and to establish that the Department will not consider any untimely-filed extension requests, described as alternative four. As discussed in the consideration of its preferred alternative, the clarification that an extension request may be of any time limit established by this part serves the objectives of the proposed rule because it makes clear that 19 CFR § 351.302(c) applies to extension requests for any time limit established by this part. This alternative would also eliminate the confusion and current difficulties of implementing the current rule by eliminating the source of these issues. However, the Department does recognize that extraordinary, extenuating circumstances can and do arise which may prevent a party from submitting a timely-filed extension request, and, therefore, it considers

this alternative to be too inflexible to permit the Department to effectively and fairly administer the unfair trade statutes. Thus, it has not been proposed.

Paperwork Reduction Act

This rule does not require a collection of information for purposes of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. § 3501 *et seq.*).

List of Subjects in 19 CFR Part 351

Administrative practice and procedure, Antidumping, Business and industry, Cheese, Confidential business information, Countervailing duties, Freedom of information, Investigations, Reporting and recordkeeping requirements.

Paul Piquado
Assistant Secretary
for Import Administration

January 9, 2013 _____
Date

For the reasons stated, 19 CFR Part 351 is proposed to be amended as follows:

PART 351—ANTIDUMPING AND COUNTERVAILING DUTIES

1. The authority citation for 19 CFR part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 1202 note; 19 U.S.C. 1303 note; 19 U.S.C. 1671 *et seq.*; and 19 U.S.C. 3538.

2. In § 351.302, revise paragraph (c) as follows:

§ 351.302 Extension of time limits; return of untimely filed or unsolicited material.

(c) Requests for extension of specific time limit.

Before the applicable time limit established under this part expires, a party may request an extension pursuant to paragraph (b) of this section. An untimely filed extension request will not be considered unless the party demonstrates that extraordinary circumstances exist. The request must be in writing, filed consistent with § 351.303, and state the reasons for the request. An extension granted to a party must be approved in writing.

<FRDOC> [FR Doc. 2013–00833 Filed 1–15–13; 8:45 am]

<BILCOD>BILLING CODE 3510–DS–P

[FR Doc. 2013-00833 Filed 01/15/2013 at 8:45 am; Publication Date: 01/16/2013]